

ORDER NO. 1730

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Robert G. Taub, Vice Chairman;
Mark Acton;
Tony Hammond; and
Nanci E. Langley

Competitive Product Prices
Global Expedited Package Services 3 (MC2010-28)
Negotiated Service Agreement

Docket No. CP2013-62

ORDER APPROVING AN ADDITIONAL
GLOBAL EXPEDITED PACKAGE SERVICES 3
NEGOTIATED SERVICE AGREEMENT

(Issued May 24, 2013)

I. INTRODUCTION

The Postal Service seeks to include an additional Global Expedited Package Services (GEPS) contract (Agreement) within the GEPS 3 product.¹ For the reasons discussed below, the Commission approves the Postal Service's request.

¹ Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, May 10, 2013 (Notice).

II. BACKGROUND

The Commission approved the addition of GEPS 3 to the competitive product list in Order No. 503, following consideration of the Postal Service's request in Docket No. MC2010-28.² The request was based on Governors' Decision No. 08-7. *Id.* at 7. The Commission concurrently established the GEPS 3 contract filed in the related Docket No. CP2010-71 as the baseline agreement for comparing potentially functionally equivalent agreements proposed for inclusion within the GEPS 3 product. *Id.*

Instant docket. The Agreement concerns rates for Express Mail International and Priority Mail International. The Postal Service notes that it will inform its contracting partner of the effective date of the Agreement as soon as possible, but no later than 30 days after receiving all necessary regulatory approvals. Notice, Attachment 1 at 7 (Article 12). The Agreement is set to expire 1 year after the effective date unless terminated sooner. *Id.*

In Order No. 1716, the Commission provided public notice of the Postal Service's filing, established the instant docket for consideration of the filing's consistency with applicable statutory policies and Commission regulations, appointed a Public Representative, and provided interested persons with an opportunity to comment.³

III. THE POSTAL SERVICE'S POSITION

The Postal Service asserts that its filing demonstrates that the Agreement complies with the requirements of 39 U.S.C. § 3633, is functionally equivalent to the baseline agreement, and requests that the Agreement be included within the GEPS 3 product. Notice at 2. It asserts that the instant Agreement fits within the Mail Classification Schedule language for the GEPS 3 product. *Id.* at 3. The Postal Service also asserts that the Agreement and the baseline agreement possess similar cost and

² See Docket Nos. MC2010-28 and CP2010-71, Order No. 503, Order Approving Global Expedited Package Services 3 Negotiated Service Agreement, July 29, 2010, at 8.

³ Notice and Order Concerning an Additional Global Expedited Package Services 3 Contract, May 15, 2013 (Order No. 1716).

market characteristics and the same functional terms, but states that prices may differ. *Id.* at 3, 4. The Postal Service identifies numerous differences between the Agreement and the baseline agreement, but asserts that the differences do not affect the fundamental service being offered or the fundamental structure of the Agreement.⁴ *Id.*

IV. COMMENTS

The Public Representative filed comments in response to Commission Order No. 1716.⁵ No other comments were received.

The Public Representative concludes, based on his review of the Notice, the Agreement, and the supporting financial model, that the Agreement is functionally equivalent to the baseline agreement. PR Comments at 2. He also states that it appears that the negotiated prices should generate sufficient revenues to cover costs and satisfy the requirements of 39 U.S.C. § 3633. *Id.*

V. COMMISSION ANALYSIS

Scope and nature of review. The Commission's responsibilities in this case are to ensure that the Agreement (1) is functionally equivalent to the baseline agreement; and (2) satisfies the requirements of 39 U.S.C. § 3633 and applicable Commission rules.

Functional equivalence. The Commission has reviewed the Postal Service's reasons for asserting that the Agreement shares similar cost and market characteristics with the baseline agreement, meets the pricing formula and classification established in Governors' Decision No. 08-7, and comports with 39 U.S.C. § 3633 and related Commission rules. It also has considered the Public Representative's views. The Commission concludes that the Agreement is substantially similar to the baseline

⁴ Differences include, among others, revisions to provisions in existing articles, the deletion of an article (related to service guarantees), causing some subsequent articles to be renumbered; and inclusion of new articles. *Id.* at 4-6.

⁵ Public Representative Comments on Postal Service Notice of Filing an Additional Global Expedited Package Services 3 Negotiated Service Agreement, May 22, 2013 (PR Comments).

agreement and that the differences the Postal Service identifies do not undermine a finding of functional equivalency. The Commission therefore finds that the instant Agreement may be included within the GEPS 3 product.

Cost considerations. The Commission has reviewed the Notice, supporting financial analyses provided under seal, and the Public Representative Comments. Based on this review, the Commission finds that the Agreement should cover its attributable costs, as required by 39 U.S.C. § 3633(a)(2). It finds that the Agreement should not result in competitive products being subsidized by market dominant products as prohibited by 39 U.S.C. § 3633(a)(1). It also finds the Agreement should have a positive effect on competitive products' contribution to institutional costs, consistent with 39 U.S.C. § 3633(a)(3). Accordingly, a preliminary review of the Agreement indicates that it is consistent with the provisions applicable to rates for competitive products. The Commission therefore finds that the Agreement is appropriately included within the GEPS Contracts 3 product.

Follow-up submissions. The Postal Service shall promptly notify the Commission of the effective date of the Agreement. Upon termination of the instant Agreement by either party, the Postal Service shall inform the Commission of this development and the date of termination. In addition, within 30 days of the termination of the Agreement, the Postal Service shall file costs, volumes, and revenues disaggregated by weight and country group associated with the contract, including any penalties paid.

VI. ORDERING PARAGRAPHS

It is ordered:

1. The Agreement filed in Docket No. CP2013-62 is included within the Global Expedited Package Services 3 (MC2010-28) product.
2. The Postal Service shall promptly notify the Commission of the effective date of the Agreement.

3. The Postal Service shall promptly notify the Commission upon termination of the Agreement by either party in accordance with the terms set out in the body of this Order.
4. Within 30 days of the termination of the Agreement, the Postal Service shall file costs, volumes, and revenues disaggregated by weight and country group associated with the contract, including any penalties paid.

By the Commission.

Shoshana M. Grove
Secretary